

AMENDED IN SENATE APRIL 28, 2004

SENATE BILL

No. 1694

Introduced by Senators Torlakson and Speier

February 20, 2004

An act to amend Sections 23540, 23546, 23550, 23560, 23566, 23622, and 23646 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1694, as amended, Torlakson. Driving under the influence: sanction.

(1) Under existing law, it is unlawful to drive a motor vehicle while under the influence of alcohol, a drug, or both, or 0.08% or more, by weight, of alcohol in one's blood, or while addicted to the use of a drug. There is another crime of driving under the influence of alcohol, a drug, or both, or with 0.08% or more, by weight, alcohol in one's blood, and causing injury to another person. Under existing law, for violations of each of these offenses, commonly known as driving under the influence and driving under the influence causing injury, respectively, (*DUI*) a court may impose sanctions, as specified. Existing law imposes increased sanctions on persons who have previously been convicted of DUI offenses within 7 years of the commission of the current offense.

This bill would ~~delete~~ *substitute a 10-year condition for* the 7-year condition as a condition to imposing the increased sanctions on repeat offenders. Because this would thereby increase the level of service on local law enforcement agencies, this bill would impose a state-mandated local program.

(2) Existing law authorizes a court to order a person convicted of a DUI offense to attend an alcohol and drug problem assessment program.

This bill would require a court to order a person who has previously been convicted of *either a DUI offense that occurred over 10 years ago or disorderly conduct based on being found in a public place under the influence of alcohol or drugs*, and who is currently convicted of a DUI offense to attend and complete that program. *The bill would authorize a court, if the program assessment recommends additional treatment, to order the person to enroll and participate in an enhanced treatment program.*

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) Driving under the influence of alcohol or drugs, or both,
4 (DUI) continues to be a significant threat to the public health and
5 safety.

6 (b) Despite significant progress and declining rates of DUI in
7 the last two decades, fatalities associated with this conduct have
8 increased for the past several years.

9 (c) Two hundred thirty-six more people died from DUI conduct
10 in 2001 than did in 1998.

11 (d) Nearly 180,000 people were arrested for DUI offenses in
12 2001, including 25 percent of whom were repeat offenders.

13 SEC. 2. Section 23540 of the Vehicle Code is amended to
14 read:

15 23540. If a person is convicted of a violation of Section 23152
16 and the offense occurred ~~following~~ *within 10 years of* a separate
17 violation of Section 23103, as specified in Section 23103.5,
18 23152, or 23153, that resulted in a conviction, that person shall be
19 punished by imprisonment in the county jail for not less than 90
20 days nor more than one year and by a fine of not less than three
21 hundred ninety dollars (\$390) nor more than one thousand dollars



1 (\$1,000). The person's privilege to operate a motor vehicle shall
2 be suspended by the Department of Motor Vehicles pursuant to
3 paragraph (3) of subdivision (a) of Section 13352. The court shall
4 require the person to surrender the driver's license to the court in
5 accordance with Section 13550.

6 SEC. 3. Section 23546 of the Vehicle Code is amended to
7 read:

8 23546. (a) If a person is convicted of a violation of Section
9 23152 and the offense occurred ~~following~~ *within 10 years of* two
10 separate violations of Section 23103, as specified in Section
11 23103.5, 23152, or 23153, or any combination thereof, that
12 resulted in convictions, that person shall be punished by
13 imprisonment in the county jail for not less than 120 days nor more
14 than one year and by a fine of not less than three hundred ninety
15 dollars (\$390) nor more than one thousand dollars (\$1,000). The
16 person's privilege to operate a motor vehicle shall be revoked by
17 the Department of Motor Vehicles as required in paragraph (5) of
18 subdivision (a) of Section 13352. The court shall require the
19 person to surrender his or her driver's license to the court in
20 accordance with Section 13550.

21 (b) A person convicted of a violation of Section 23152
22 punishable under this section shall be designated as a habitual
23 traffic offender for a period of three years, subsequent to the
24 conviction. The person shall be advised of this designation
25 pursuant to subdivision (b) of Section 13350.

26 SEC. 4. Section 23550 of the Vehicle Code is amended to
27 read:

28 23550. (a) If a person is convicted of a violation of Section
29 23152 and the offense occurred ~~following~~ *within 10 years of* three
30 or more separate violations of Section 23103, as specified in
31 Section 23103.5, or Section 23152 or 23153, or any combination
32 thereof, that resulted in convictions, that person shall be punished
33 by imprisonment in the state prison, or in a county jail for not less
34 than 180 days nor more than one year, and by a fine of not less than
35 three hundred ninety dollars (\$390) nor more than one thousand
36 dollars (\$1,000). The person's privilege to operate a motor vehicle
37 shall be revoked by the Department of Motor Vehicles pursuant to
38 paragraph (7) of subdivision (a) of Section 13352. The court shall
39 require the person to surrender the driver's license to the court in
40 accordance with Section 13550.

(b) A person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 5. Section 23560 of the Vehicle Code is amended to read:

23560. If a person is convicted of a violation of Section 23153 and the offense occurred ~~following~~ *within 10 years of* a separate violation of Section 23103, as specified in Section 23103.5, 23152, or 23153 that resulted in a conviction, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 120 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

SEC. 6. Section 23566 of the Vehicle Code is amended to read:

23566. (a) If a person is convicted of a violation of Section 23153 and the offense occurred ~~following~~ *within 10 years of* two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, that resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars (\$1,015) nor more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) If a person is convicted of a violation of Section 23153, and the act or neglect proximately causes great bodily injury, as defined in Section 12022.7 of the Penal Code, to any person other than the driver, and the offense occurred ~~following~~ *within 10 years of* two or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any

combination of these violations, that resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars (\$1,015) nor more than five thousand dollars (\$5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(c) If a person is convicted under subdivision (b), and the offense for which the person is convicted occurred ~~following~~ *within 10 years of* four or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination of these violations, that resulted in convictions, that person shall, in addition and consecutive to the sentences imposed under subdivision (b), be punished by an additional term of imprisonment in the state prison for three years.

The enhancement allegation provided in this subdivision shall be pleaded and proved as provided by law.

(d) A person convicted of Section 23153 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

(e) A person confined in state prison under this section shall be ordered by the court to participate in an alcohol or drug program, or both, that is available at the prison during the person's confinement. Completion of an alcohol or drug program under this section does not meet the program completion requirement of paragraph (6) of subdivision (a) of Section 13352, unless the drug or alcohol program is licensed under Section 11836 of the Health and Safety Code, or is a program specified in Section 8001 of the Penal Code.

SEC. 7. Section 23622 of the Vehicle Code is amended to read:

23622. (a) In any case charging a violation of Section 23152 or 23153 and the offense occurred ~~following~~ *within 10 years of* one or more separate violations of Section 23103, as specified in Section 23103.5, that occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, that resulted in convictions,

1 the court shall not strike any separate conviction of those offenses
2 for purposes of sentencing in order to avoid imposing, as part of
3 the sentence or term of probation, the minimum time of
4 imprisonment and the minimum fine, as provided in this chapter,
5 or for purposes of avoiding revocation, suspension, or restriction
6 of the privilege to operate a motor vehicle, as provided in this code.

7 (b) In any case charging a violation of Section 23152 or 23153,
8 the court shall obtain a copy of the driving record of the person
9 charged from the Department of Motor Vehicles and may obtain
10 any records from the Department of Justice or any other source to
11 determine if one or more separate violations of Section 23103, as
12 specified in Section 23103.5, that occurred on or after January 1,
13 1982, 23152, or 23153, or any combination thereof, that resulted
14 in convictions, have occurred ~~prior to~~ *within 10 years of* the
15 charged offense. The court may obtain, and accept as rebuttable
16 evidence, a printout from the Department of Motor Vehicles of the
17 driving record of the person charged, maintained by electronic and
18 storage media pursuant to Section 1801 for the purpose of proving
19 those separate violations.

20 (c) If any separate convictions of violations of Section 23152
21 or 23153 are reported to have occurred within 10 years of the
22 charged offense, the court shall notify each court where any of the
23 separate convictions occurred for the purpose of enforcing terms
24 and conditions of probation pursuant to Section 23602.

25 SEC. 8. Section 23646 of the Vehicle Code is amended to
26 read:

27 23646. (a) Each county alcohol program administrator or the
28 administrator's designee shall develop, implement, operate, and
29 administer an alcohol and drug problem assessment program
30 pursuant to this article for each person described in subdivision

31 (b). The alcohol and drug problem assessment program may
32 include a referral and client tracking component.

33 (b) (1) The court shall order a person to participate in an
34 alcohol and drug problem assessment program pursuant to this
35 section and Sections 23647 to 23649, inclusive, and the related
36 regulations of the State Department of Alcohol and Drug
37 Programs, if the person was convicted of a violation of Section
38 23152 or 23153 that occurred ~~following~~ *within 10 years of* a
39 separate violation of Section 23152 or 23153 that resulted in a
40 conviction, the person was required to attend a licensed program

1 pursuant to a court order, and the person has once failed to comply
2 with the rules and policies of the licensed program, other than a
3 rule relating to the payment of fees, in accordance with the rules
4 and regulations of the state department.

5 (2) A court may order a person convicted of a violation of
6 Section 23152 or 23153 to attend an alcohol and drug problem
7 assessment program pursuant to this article.

8 (3) The court shall order a person convicted of a violation of
9 Section 23152 or 23153 who has previously been convicted of a
10 violation of *Section 23152 or 23153 that occurred more than 10*
11 *years ago, or has been previously convicted of a violation of*
12 *subdivision (f) of Section 647 of the Penal Code, to attend and*
13 *complete an alcohol and drug problem assessment program under*
14 *this article. If the program assessment recommends additional*
15 *treatment, the court may order a person under Section 23538 to*
16 *enroll and participate in either of the programs described under*
17 *paragraph (4) of subdivision (b) of Section 23542.*

18 (c) The State Department of Alcohol and Drug Programs shall
19 establish minimum specifications for alcohol and other drug
20 problem assessments and reports not later than September 30,
21 1999.

22 SEC. 9. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.